

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2149 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

HARENDRA @ IALO NATVARBHAI DARJI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR. RM CHAUHAN, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 03/08/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 17-1-98 passed by the Police Commissioner, Ahmedabad City, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the

legality and validity of the order of detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on one prohibition case registered by the DCB for which investigation is going on. Over and above this, reliance is also placed on the statements of as many as four witnesses for the alleged incidents which took place on 20-12-97 and 5-1-98 when the petitioner and his associates were taking delivery of the bags containing illicit liquor near Mahatma Gandhi High School and when the witness told the detenu not to do so near the school, the witness was beaten. Many people thereafter gathered. However, they started running helter-skelter when the petitioner rushed towards the crowd and an atmosphere of fear and terror was created. Similar incident took place when the delivery was taken near the temple of lord Julelal. At that time also the concerned witnesses were beaten.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a boot-legger within the meaning of Section 2(b) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

This petition is required to be allowed on the ground that the representation made on behalf of the petitioner by his Advocate was not considered by the Hon'ble the Chief Minister. It is stated that Advocate Ms D.R.Kachhawah sent representation on 17-3-98 on behalf of the detenu to Hon'ble the Chief Minister. There is no dispute to the fact that the said representation was received by the department on 18-3-98. However, the Section Officer, Home Department, on 23th March 1998 sent a letter to the learned Advocate to send the authority letter of the detenu. It is further stated that as and when such authority is received, thereafter the representation will be considered. Needless to state that the learned Advocate did not send the authority letter and consequently the representation was not considered.

On behalf of the petitioner Ms Kachhawah submitted that the action of not considering the representation and insistence on the part of the authority for the authority letter is violative of the right guaranteed to the petitioner under Article 22(5) of the Constitution of India and, therefore, the

continued detention of the detenu is vitiated.

Having heard the learned Advocate at length, I am of the view that the learned Advocate had no personal matter and she was only advocating the cause of her client-the detenu and in matters where the liberty of the subject is concerned and a highly cherished right is involved, the representation made on behalf of the detenu is required to be construed liberally and not technically so as to frustrate or defeat the concept of liberty which is engrained in Article 21 of the Constitution of India (See: Balchand Chorasias vs Union of India and others, AIR 1978 SC 297). As the representation undisputedly has not been considered by the Government, which it was duty bound to consider, in my view that by itself has vitiated the order of detention.

In the result, this petition is allowed. The order of detention dated 17-1-98 is quashed and set aside. The detenu Harendra @ Lalo Natwarbhai Darji is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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